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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LFP IP, LLC,

Plaintiff,

vs.

LEE KEITH BRETT,

Defendant.

Case No.: 2:16-CV-00166

COMPLAINT FOR:

**1. FEDERAL TRADEMARK
INFRINGEMENT;**

**2. FEDERAL UNFAIR
COMPETITION – FALSE
DESIGNATION OF ORIGIN;**

**3. FEDERAL TRADEMARK
DILUTION; AND**

**4. VIOLATION OF THE
ANTICYBERSQUATTING
CONSUMER PROTECTION
ACT.**

1 Plaintiff LFP IP, LLC (“Plaintiff” or “LFP”), by and through its attorneys,
2 herein alleges:
3

4 **NATURE OF THE ACTION**

5 1. This is an action for preliminary and permanent injunctive relief and
6 damages arising from Defendant’s infringement of the federal rights of LFP’s
7 registered HUSTLER® marks. Upon information and belief, Defendant LEE
8 KEITH BRETT operates an online retail apparel store that sells various
9 “American Hustler” apparel items, and is thereby intentionally and willfully
10 infringing and trading off of the famous HUSTLER marks.
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13 **JURISDICTION AND VENUE**

14 2. This is a civil action seeking injunctive relief and damages under 15
16 U.S.C. § 1051, *et seq.* (the “Lanham Act”), for federal trademark infringement,
17 federal statutory unfair competition under the Lanham Act, federal trademark
18 dilution, and for Defendant’s violation of the Anticybersquatting Consumer
19 Protection Act (15 U.S.C. § 1125 (d)(1)(A)).
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21

22 3. This Court has subject matter jurisdiction of this action over the
23 federal claims pursuant to 28 U.S.C. §§ 1331; 1332; 1338 and 1367; 15 U.S.C. §
24 1125(a); and 15 U.S.C. § 1121.
25

26 4. Upon information and belief, this Court has jurisdiction over the
27 individual Defendant LEE KEITH BRETT (“Defendant BRETT”) who is an
28 individual residing in Dublin, Ohio. Plaintiff LFP alleges, on information and

1 belief, that Defendant BRETT is the owner and operator of
2 www.americanhustlerclothing.com, which sells and distributes products
3 nationwide, including within Los Angeles County. Accordingly, upon
4 information and belief, Defendant BRETT has caused his infringing products to
5 be advertised, promoted, and sold in this judicial district. Defendant BRETT is
6 doing business within the State of California, and has transacted business in the
7 State of California, giving rise to the action commenced herein.
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11 5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and
12 (c) because Defendant BRETT does business and sells his products within the
13 Central District of California, and has caused his infringing products to be
14 advertised, promoted, and sold in this judicial district
15
16

17 **PARTIES**

18 6. At all times herein relevant, Plaintiff LFP IP, LLC (“Plaintiff” or
19 “LFP”) was and is a Delaware limited liability company, authorized to do
20 business in the State of California, with an office and place of business at 8484
21 Wilshire Boulevard, Suite 900, Beverly Hills, California 90211.
22
23

24 7. Upon information and belief, Defendant BRETT is an individual with
25 a residence located at 5751 Tuttle Grove Boulevard, Dublin, Ohio 43016, and
26 operates and/or controls the website located at:
27 www.americanhustlerclothing.com
28

FACTS COMMON TO ALL CAUSES OF ACTION

**THE
HUSTLER
MARKS**

8. Since at least as early as 1972, Plaintiff LFP and its predecessors, affiliates, related companies, and licensees, have used its HUSTLER mark in connection with various goods and services.

9. LFP's use of the HUSTLER mark includes but is not limited to its use in connection with: magazines as early as 1972; video tapes as early as 1983; online magazines as early as 1993; skincare products and sexual aids as early as 1997; clothing and retail store services as early as 1998; DVDs and jewelry as early as 1999; night clubs and glassware as early as 2000; broadcasting services and belt buckles as early as 2004; cigarette lighters as early as 2005; garments for pets, backpacks, duffel bags, handbags, messenger bags, purses, tote bags, travel bags, and wallets as early as 2007; motorcycle helmets as early as 2008; and eyewear and protective gear for motorcycle riding as early as 2011.

10. Plaintiff LFP owns numerous federal registrations on the Principal Register for its HUSTLER marks and various related and composite marks. Such registrations include, but are not limited to, the following, most of which have become incontestable within the meaning of the Lanham Act:

Mark	Reg. No.	Reg. Date	Date of First Use in Commerce	Goods/Services
HUSTLER	1011001	05-20-1975	01-01-1972	Entertainment magazine in Class 16
HUSTLER HUMOR	1145751	01-13-1981	02-28-1978	Entertainment magazine in Class 16
HUSTLER FANTASIES	1421856	12-23-1986	09-14-1983	Adult entertainment magazine in Class 16
HUSTLER	1474758	02-02-1988	11-01-1983	Pre-recorded video tapes in Class 9
HUSTLER	2001594	09-17-1996	12-31-1993	Providing computer on-line magazine in Class 42
HUSTLER	2200271	10-27-1998	01-30-1997	Skin care products, namely, skin soap, body oil and cream, bath oil, massage oil in Class 3; Adult sexual aids, namely, artificial penises, penis enlargers, mechanical apparatus to aid in the erection of the penis, rubber ring to be worn about the penis, vibrators, benwa balls, artificial vaginas in Class 10
HUSTLER'S TABOO	2211238	12-15-1998	05-12-1998	Prints and publications, namely, an adult entertainment magazine in Class 16
HUSTLER'S TABOO	2582229	06-18-2002	09-30-1998	Providing on-line entertainment, photographs, images, education, information and editorial content via the internet, World

				Wide Web and other electronic and telecommunications transmission systems, miscellaneous computer services and all other services in the field of adult entertainment in Class 41
HUSTLER HOLLYWOOD	2318186	02-15- 2000	12-03- 1998	Retail store services relating to books and prerecorded video cassettes in Class 35
HUSTLER HOLLYWOOD	4312312	04-02- 2013	12-03- 1998	Retail store services featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35
HUSTLER	2689852	02-25- 2003	12-06- 1998	Clothing, namely, beach wear, blouses, coats, coveralls, dresses, head wear, jackets, jeans, jogging suits, jumpers, leg warmers, leggings, lingerie, lounge wear, neckwear, pants, scarves, shirts, ski wear, slacks, sleep

				wear, tank tops, socks, vests in Class 25
HUSTLER VIDEO	2677772	01-21-2003	09-14-1999	Digital video discs (DVDs) in the field of adult entertainment in Class 9
HUSTLER	2679483	01-28-2003	09-20-1999	Men's and women's jewelry, namely, rings, necklaces, bracelets in Class 14; Glassware, namely shot glasses, mugs, beer steins in Class 21
HUSTLER XXX	2448315	05-01-2001	09-21-1999	Publications, namely, an adult entertainment magazine in Class 16
HUSTLER XXX	2453938	05-22-2001	04-04-2000	Pre-recorded discs in the field of adult entertainment in Class 9
HUSTLER	2410985	12-05-2000	06-22-2000	Night club in Class 42
HUSTLER CLUB	2773372	10-14-2003	12-28-2000	Operation of night clubs in Class 41
HUSTLAZ	2772467	10-07-2003	12-03-2002	Providing an online interactive Web site featuring adult entertainment in Class 41
HUSTLER XXX	2716466	05-13-2003	12-04-2002	Providing on-line entertainment, photographs, images via the internet, World Wide Web and other electronic and telecommunications transmission systems, miscellaneous computer services and all other services in the field of adult

				entertainment in Class 41
HUSTLER TV	3008950	10-25-2005	04-20-2004	Cable, satellite, television and video-on-demand (VOD) broadcasting in Class 38
HUSTLER	3166771	10-31-2006	04-30-2004	Men's and women's belt buckles not of precious metal in Class 26; Cigarette lighters not of precious metal in Class 34
HUSTLERCASH	4124112	04-10-2012	10-31-2005	Advertising and on-line marketing services offered via global computer networks and global communication networks in Class 35
HUSTLER	3149102	09-26-2006	06-10-2006	Footwear, namely, all types of shoes, boots, slippers, thongs and socks in Class 25
HUSTLER VIDEO & Design	3431048	05-20-2008	12-15-2006	Digital materials, namely, digital video discs (DVDs), downloadable films provided via a video-on-demand service, and downloadable video files, all featuring adult entertainment in Class 9
HUSTLER	3349195	12-04-2007	09-01-2007	Garments for pets in Class 18
HUSTLER	4354035	06-18-2013	12-31-2007	Backpacks; duffel bags; handbags; messenger bags; purses; tote bags;

				travel bags; wallets in Class 18
HUSTLER	3918404	02-15-2011	01-31-2008	Motorcycle helmets in Class 9
HUSTLER	4354038	06-18-2013	03-30-2008	Digital media, namely, downloadable audio and video recordings, digital versatile discs (DVDs), and high definition digital discs featuring adult entertainment in Class 9
HUSTLER HD & Design	3719932	12-01-2009	06-13-2009	Broadcasting services and provision of telecommunication access to films and television programmes provided via a video-on-demand service in Class 38
HUSTLER	4257789	12-11-2012	12-31-2009	Broadcasting services, namely, video-on-demand transmission services; video broadcasting; and electronic transmission and streaming of data, images, videos and other digital media via the internet, wired or wireless networks, to computers, televisions, or mobile devices in Class 38
HUSTLER	4453481	12-24-2013	06-30-2011	Eyewear, namely, sunglasses; Protective gear for motorcycle riding, namely, motorcycle gloves for protecting hands in an

				accident and motorcycle goggles in Class 9
HUSTLERSTORE	4268341	01-01-2013	01-31-2012	On-line retail store services featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35
HUSTLERNOW	4424875	10-29-2013	02-27-2013	Mobile media services in the nature of electronic transmission, broadcasting and delivery of audio, video and multimedia adult entertainment content including text, data, images, audio, video and audiovisual files by means of the internet, wireless communication, electronic communications networks and computer networks in Class 38; Entertainment services in the nature of providing adult

				entertainment programs and content, namely, providing a web site featuring non-downloadable adult-themed motion pictures, related film clips, graphics and information relating to adult entertainment, via the Internet, electronic communications networks, computer networks and wireless communications networks in Class 41
LARRY FLYNT'S HUSTLER EXPRESS	4611444	09-23-2014	03-31-2014	Retail stores featuring digital video discs, adult sexual stimulation aids, apparel, lingerie, hats, cosmetics, candles, perfumes, shave creams, bath and body products, personal lubricants, body creams, novelty items, party games, playing cards, candies, jewelry, books, magazines, condoms, and lotions in Class 35

11. The federal trademark registrations set forth in Paragraph 10 above (among others, the “HUSTLER Marks”) are valid and subsisting, and constitute prima facie evidence of their validity.

1 12. By virtue of its extensive and longtime use, substantial worldwide
2 promotional efforts and commercial success of its famous HUSTLER Marks, LFP
3 has established valuable goodwill in the HUSTLER Marks, and the public has
4 come to associate the HUSTLER Marks with LFP and its famous founder, Larry
5 Flynt. As such, the HUSTLER Marks have become famous and the public has
6 come to know the HUSTLER Marks as an indication of goods and services that
7 originate from LFP.
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11 13. Trademark Registration Nos. 1011001, 1145751, 1421856, 1474758,
12 2001594, 2200271, 2211238, 2582229, 2318186, 2689852, 2677772, 2679483,
13 2448315, 2453938, 2410985, 2773372, 2772467, 2716466, 3008950, 3166771,
14 3149102, 3431048, 3349195, and 3719932 identified in paragraph 10 above are
15 incontestable. Affidavits have been filed pursuant to Sections 8 and 15 of the
16 Lanham Act, 15 U.S.C. § § 1058 and 1065 for all of the subject registered
17 trademarks listed in this paragraph.
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21 14. The registered HUSTLER Marks are currently owned by Plaintiff
22 LFP IP, LLC.
23

24 **DEFENDANT BRETT'S SERVICE MARK APPLICATION**

25 15. On or about June 10, 2015, Defendant caused to be filed with the
26 United States Patent and Trademark Office ("USPTO") Trademark Application
27 Serial No. 86657943 under Section 1(a), 15 U.S.C. § 1051(a) for "AMERICAN
28 HUSTLER" with the design shown below:



in connection with “*On-line retail store services featuring clothing and billiard products*” in International Class 035.

16. On September 9, 2015, Plaintiff LFP IP, LLC filed with the United States Patent and Trademark Office a Letter of Protest with regard to Application Serial No. 86657943.

17. On September 22, 2015, Plaintiff’s Letter of Protest was accepted by the United States Patent and Trademark Office.

18. On October 22, 2015, the USPTO issued an Office Action and refused to register Application Serial No. 86657943 because of a likelihood of confusion with the marks in LFP’s U.S. Registration Nos. 2689852, 4268341, and 4312312 under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

**DEFENDANT BRETT’S WEBSITE AND
SALE OF INFRINGING APPAREL**

19. On information and belief, in or about early November 2015, Defendant BRETT launched a newly-designed website, operating at the www.americanhustlerclothing.com domain name, to advertise, distribute and sell “American Hustler” branded apparel.

1 or affiliation between Defendant's apparel and apparel actually licensed,
2 sponsored or affiliated with Plaintiff LFP.
3

4 25. Defendant BRETT's use of "American Hustler" or any confusingly
5 similar variation thereof, infringes the federal trademark rights of Plaintiff LFP.
6 Upon information and belief, Defendant BRETT is deliberately, intentionally and
7 willfully infringing Plaintiff's HUSTLER trademarks, and the goodwill associated
8 by the public with the subject names and marks, and falsely making it appear to
9 consumers that Plaintiff LFP is endorsing, sponsoring, or are otherwise affiliated
10 with Defendant BRETT and/or his products.
11
12

13 26. Upon information and belief, if not preliminarily and permanently
14 enjoined by this Court, Defendant BRETT will continue to operate the
15 www.americanhustlerclothing.com website to sell apparel bearing the HUSTLER
16 Marks, or confusingly similar variations thereof, in violation of Plaintiff's rights
17 under the Lanham Act, 15 U.S.C. § 1114.
18
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21 27. Plaintiff LFP also seeks monetary damages and attorneys' fees for
22 Defendant BRETT's willful use and advertising of the HUSTLER Marks,
23 inclusive of a disgorgement of all revenues earned by him since acquiring the
24 www.americanhustlerclothing.com domain name.
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26

27 28. Plaintiff has no adequate remedy at law.
28

COUNT II

FEDERAL UNFAIR COMPETITION –

FALSE DESIGNATION OF ORIGIN

(15 U.S.C. § 1125(a))

29. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. LFP's HUSTLER Marks are widely recognized by the general consuming public of the United States as a designation of the source of goods and services sold utilizing said marks by Plaintiff or its authorized licensees.

31. Defendant has operated the www.americanhustlerclothing.com website and marketed "American Hustler" apparel by unlawfully utilizing the HUSTLER Marks, or confusingly similar marks, without Plaintiff's permission; with the intent to create an association and affiliation between Defendant and Plaintiff; and to trade-off on the fame and notoriety of Plaintiff by usurping the goodwill of the HUSTLER Marks.

32. Defendant BRETT's unauthorized conduct has also deprived, and will continue to deprive, Plaintiff of the ability to control the consumer perception of its products and services offered under Plaintiff's HUSTLER Marks, placing the valuable reputation and goodwill of Plaintiff LFP in the hands of Defendant.

33. The continued use by Defendant BRETT of the HUSTLER Marks will result in deception and confusion of the public as to the endorsement of the

1 www.americanhustlerclothing.com website and “American Hustler” apparel by
2 Plaintiff, and constitutes unfair competition and violation of the federal Lanham
3 Act, 15 U.S.C. § 1125(a), and violation of the Plaintiff’s exclusive rights to
4 exploit said famous HUSTLER Marks. The foregoing conduct of Defendant
5 further constitutes a false designation of origin in violation of 15 U.S.C. §
6 1125(a).
7
8

9 34. Defendant BRETT has direct and full knowledge of Plaintiff’s prior
10 use of, and rights in, Plaintiff’s HUSTLER Marks before the acts complained of
11 herein. The knowing, intentional, and willful nature of the acts set forth herein
12 renders this an exceptional case under 15 U.S.C. § 1117(a).
13
14

15 35. Upon information and belief, unless preliminarily and permanently
16 enjoined by this Court, Defendant will continue to unlawfully advertise and
17 exploit the HUSTLER Marks, causing Plaintiff irreparable damage and injury.
18
19

20 36. Plaintiff has no adequate remedy at law.
21

22 **COUNT III**

23 **TRADEMARK DILUTION**

24 (15 U.S.C. § 1125 (c))

25 37. Plaintiff incorporates by reference the allegations contained in
26 Paragraphs 1 through 36 of this Complaint as if fully set forth herein.
27

28 38. Plaintiff’s HUSTLER Marks are famous and distinctive and are
entitled to protection against dilution by blurring or tarnishment.

1 (2) Awarding Plaintiff its monetary damages, including its actual damages
2 sustained as a result of Defendant's infringement of Plaintiff's HUSTLER Marks,
3 and other unlawful conduct set forth herein, together with an accounting of
4 Defendant's profits, as provided in 15 U.S.C. § 1117, in amounts to be determined
5 at trial.
6

7
8 (3) Directing Defendant to surrender for destruction all apparel, signage,
9 promotional material, inclusive of all goods, labels, advertising material, and other
10 items containing or including the HUSTLER Marks, and any confusingly similar
11 mark.
12

13
14 (4) Directing Defendant to immediately cease use of the
15 www.americanhustlerclothing.com domain name and to immediately transfer the
16 domain name registration to Plaintiff LFP. Such Order should further direct
17 Defendant BRETT to sign all paperwork and to take all required actions to
18 effectuate transfer.
19
20

21 (5) Awarding Defendant's profits to Plaintiff that are derived by reason
22 of Defendant's infringing activities.
23

24 (6) Awarding Plaintiff treble damages and its costs, attorneys' fees and
25 expenses in this suit under 15 U.S.C. § 1117, as a result of Defendant BRETT's
26 willful, intentional, and deliberate acts in violation of the Lanham Act.
27

28 (7) Awarding Plaintiff punitive damages against Defendant for his willful
misconduct, in an amount to be determined at trial.

1 (8) Awarding Plaintiff its costs and reasonable attorneys' fees and expert
2 witness fees in this action.

3
4 (9) Prejudgment and post judgment interest.

5 (10) Granting Plaintiff such other and further relief as the Court may deem
6 just and equitable.

7
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9 Dated: January 8, 2016

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11
12 /s/Jonathan W. Brown

13 Jonathan W. Brown, Esq.

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REQUEST FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 8, 2016

/s/Jonathan W. Brown

Jonathan W. Brown, Esq.

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